

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIA CONCEPCION NIETO DE GIANINI,) Case No.: 1:21-cv-0416 JLT
Plaintiff,)
v.) ORDER GRANTING PLAINTIFF'S MOTION
ANDREW SAUL,) TO PROCEED IN FORMA PAUPERIS
Commissioner of Social Security,) (Doc. 2)
Defendant.)
)

Maria Concepcion Nieto de Gianini seeks to proceed *in forma pauperis* with an action for judicial review of the administrative decision denying an application for Social Security benefits. Pending before the Court are the complaint (Doc. 1) and motion to proceed *in forma pauperis*. (Doc. 2) For the following reasons, the Court finds issuance of the new case documents is appropriate.

I. Proceeding *in forma pauperis*

The Court may authorize the commencement of an action without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court reviewed the financial status affidavit (Doc. 2), and finds the requirements of 28 U.S.C. § 1915(a) are satisfied. Therefore, Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**.

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1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim is
6 frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the
12 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
13 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a). The purpose of the
14 complaint is to give the defendant fair notice of the claims, and the grounds upon which the complaint
15 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

16 Rule 8 does not require detailed factual allegations, but it demands more than an
17 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
18 labels and conclusions or a formulaic recitation of the elements of a cause of action
will not do. Nor does a complaint suffice if it tenders naked assertions devoid of
further factual enhancement.

19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
20 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
21 268 (9th Cir. 1982). The Court clarified further,

22 [A] complaint must contain sufficient factual matter, accepted as true, to “state a
claim to relief that is plausible on its face.” [Citation]. A claim has facial plausibility
23 when the plaintiff pleads factual content that allows the court to draw the reasonable
inference that the defendant is liable for the misconduct alleged. [Citation]. The
24 plausibility standard is not akin to a “probability requirement,” but it asks for more
than a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a
complaint pleads facts that are “merely consistent with” a defendant’s liability, it
“stops short of the line between possibility and plausibility of ‘entitlement to relief.’

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27 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
28 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal

1 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
2 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
3 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

4 **IV. Discussion and Analysis**

5 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
6 benefits. (Doc. 1) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

7 Any individual, after any final decision of the Commissioner made after a hearing to
8 which he was a party, irrespective of the amount in controversy, may obtain a review of
9 such decision by a civil action commenced within sixty days after the mailing to him of
10 such decision or within such further time as the Commissioner may allow. Such action
11 shall be brought in the district court of the United States for the judicial district in
which the plaintiff resides, or has his principal place of business . . . The court shall
have power to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of Social Security,
with or without remanding the cause for a rehearing.

12 *Id.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
13 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

14 Plaintiff seeks to appeal the final administrative decision denying an application for benefits.
15 (Doc. 1 at 1-2) Plaintiff reports the Appeals Council issued a notice denying a request for review of
16 the decision on June 3, 2020. (*Id.* at 1) She requested an extension of time to file a civil action, and
17 the Appeals Council granted the extension on February 19, 2021. (*Id.* at 2) Thus, any request for
18 judicial review was to be filed no later than March 26, 2021. Because Plaintiff initiated this action by
19 filing a complaint prior to that date, the request for judicial review was timely.

20 **V. Conclusion and Order**

21 Plaintiff's complaint states a cognizable claim for review of the administrative decision denying
22 Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

23 1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;

24 2. The Clerk of Court is **DIRECTED** to issue summons as to Andrew Saul, Commissioner
of Social Security;

25 3. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with Social Security Case
Documents, including the Scheduling Order, Order regarding Consent, the Consent Form, and USM-
285 Forms;

4. The U.S. Marshal is **DIRECTED** to serve a copy of the complaint, summons, and this order upon the defendant as directed by Plaintiff in the USM Forms; and

5. After service, the matter will remain **STAYED** pursuant to General Order 615, until the administrative record is filed or further order of the Court lifting the stay.

IT IS SO ORDERED.

Dated: **March 16, 2021**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE